IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 20168 of 2005(A)

PETITIONER:

THIRUMBADY RUBBER COMPANY LIMITED.,
REPRESENTED BY THE SENIOR MANAGER,
MUKKOM POST, KOZHIKODE.

BY ADV. SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

RESPONDENTS:

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1. P.SURESH KUMAR,
PLAKKUMCHALK HOUSE, POST NEELESWARAM,
VIA-THAMARASSERI.

2. T.BALAN, PF NO.717, THIRUMBADI ESTATE,
NEELESWARAM DIVISION, MUKKOM POST,
KOZHIKODE.

3. THE LABOUR COURT, KOZHIKODE,
REPRESENTED BY ITS SECRETARY,
CIVIL STATION, KOZHIKLODE.

BY ADV. SRI.V.RAJENDRAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (WP(C) NO.20168 OF 2005)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the common order of the Labour Court dtd.1.12.04 in CP Nos.20/01 & 21/01.

Ext.P2: Copy of the memorandum of settlement dtd.10.4.2001.

Ext.P3: Copy of the claim statement filed in CP No.20/01.

Ext.P4: Copy of the objection filed by the petitioner in CP No.20/01.

Ext.P5: Copy of the rejoinder filed by the first respondent in CP No.20/01.

Ext.P6: Copy of the Claim statement filed by the 2nd respondent in CP No.21/01.

Ext.P7: Copy of the objection filed by the petitioner in CP No.21/01.

Ext.P8: Copy of the rejoinder filed by R2 in CP No.21/01.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

WP(C) NO. 20168 OF 2005 - A

Dated this the 9th day of August, 2007

J U D G M E N T

The petitioner is the management in C.P.Nos.20 and 21 of 2001 before the Labour Court, Kozhikode. The claim petitions were filed by respondents 1 and 2 seeking balance wages for the period of suspension since they were found not guilty and reinstated in service. Ext.P1 is the common order passed by the Labour Court in those Claim Petitions whereby the Labour Court directed the petitioner to pay an amount of Rs.58,049.77 and Rs.60,919.66 to respondents 1 and 2 respectively. The petitioner is challenging Ext.P1 order on the ground that the Labour Court did not have jurisdiction to decide the issue involved in the Claim Petitions since the question of entitlement of respondents 1 and 2 for the balance wages itself was under dispute. The contention is that only recovery of monetary equivalent of right ascertainable in terms of money can be resorted to through proceedings under Section 33 C(2) of the Industrial Disputes Act (for short 'the Act').

2. I have heard both sides. Certain facts are admitted in this case which are (1) respondents 1 and 2 were suspended pending enquiry on 2.7.1999, (2) subsequently, they were reinstated pursuant to Ext.P2 settlement dated 10.4.2001, (3) in the domestic enquiry conducted by the management, respondent 1 and 2 were found not guilty, (4) the petitioner agreed to reinstate respondents 1 and 2 with effect from 25.4.2001, (5) they also agreed to give Rs.3000/- to each of respondents 1 and 2 as interim relief and (6) lastly, parties decided to refer the question of payment of balance wages for the period of suspension to the appropriate authority. It is pursuant to the said settlement that respondents 1 and 2 filed the Claim Petitions which have culminated in Ext.P1 order.

3. In the wake of the above said admitted facts, I do not find any merit in the contention of the petitioner that the eligibility of respondents 1 and 2 for balance wages has to be decided in an industrial dispute. When a suspended employee is reinstated in service after

finding him not guilty of the charges levelled against him, it goes without saying that the workman would be entitled to full wages for the period of suspension. For that, ascertainment of eligibility for wages by resorting to an industrial dispute is totally unnecessary. Right to get balance wages is automatic unless parties agree to the contrary. The petitioner has no case that respondents 1 and 2 have so agreed. Therefore, I do not find any merit in the contention of the petitioner that without resorting to the industrial dispute, for getting the rights of respondents 1 and 2 for wages during the suspension period adjudicated, no claim petition would lie under Section 33C(2) of the Act.

In the above circumstances, the writ petition lacks merit and the same is dismissed.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007